

MID SUSSEX DISTRICT COUNCIL

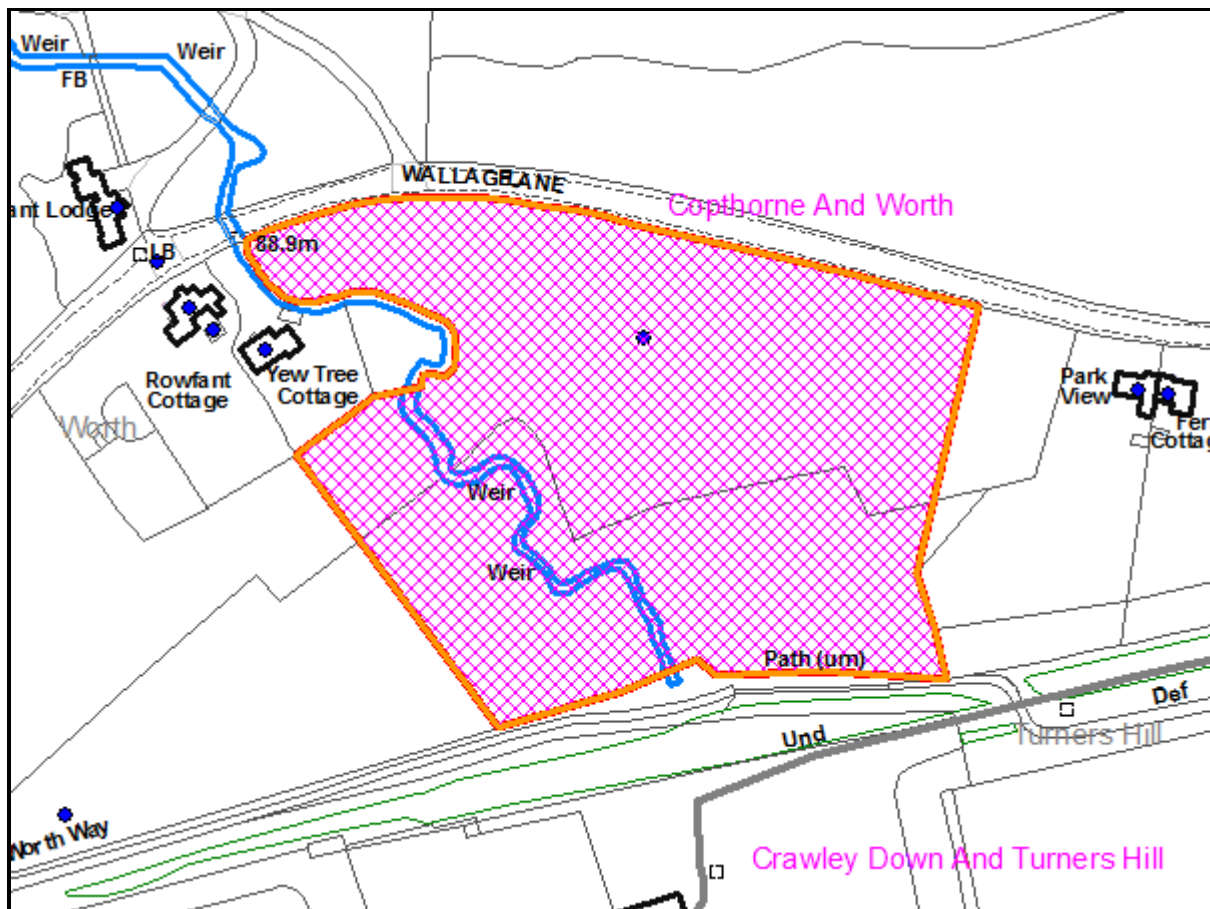
Planning Committee B

28 FEB 2019

RECOMMENDED FOR REFUSAL

Worth

DM/18/4821



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**LAND TO THE EAST OF YEW TREE COTTAGE WALLAGE LANE  
ROWFANT  
RETENTION OF CABIN FOR RESIDENTIAL PURPOSES FOR A  
TEMPORARY PERIOD OF ONE YEAR.  
MS MARANDA LAMPSON**

POLICY: Ancient Woodland / Areas of Special Control for Adverts /  
Countryside Area of Dev. Restraint / Classified Roads - 20m buffer /  
Methane Gas Safeguarding / Aerodrome Safeguarding (CAA) /  
Radar Safeguarding (NATS) /

ODPM CODE: Minor Other

8 WEEK DATE: 1st March 2019

WARD MEMBERS: Cllr Edward Matthews / Cllr Anthony Dorey /

CASE OFFICER: Andrew Clarke

## **PURPOSE OF REPORT**

To consider the recommendation of the Divisional Leader for Planning and Economy on the application for planning permission as detailed above.

## **EXECUTIVE SUMMARY**

Planning permission is sought for the retention of a single dwellinghouse for a period of one year which has been constructed within an area of woodland within a rural location. The development has been completed and occupied without planning permission and represents a breach of planning control.

The application has been referred to members upon the request of the Ward members, Councillors Edward Matthews and Tony Dorey, who wish the Committee to take into consideration the compassionate grounds for allowing temporary planning permission for one year.

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the development plan and then to take account of other material planning considerations including the NPPF.

National planning policy states that planning should be genuinely plan led. The Council has an adopted District Plan and is able to demonstrate that it has a five year housing land supply. Planning decisions should therefore be in accordance with the development plan unless material considerations indicate otherwise. As the Council can demonstrate a 5 year supply of deliverable housing land the planning balance set out in the NPPF is an un-tilted one.

The site lies in a rural area accessible primarily only by private car and where the principle of new residential development is not supported. The site is within an area of woodland which benefits from an Ancient Woodland designation. The development, and its associated residential curtilage, poses a threat to the retention of the woodland and its loss would cause harm to biodiversity and the character and appearance of the area whilst the current access has not been proved to be safe and poses a risk to highway safety.

The applicant states their personal circumstances relating to care for an elderly relative and lack of alternative accommodation should be considered exceptional

circumstances which should outweigh the requirements of the development plan.

Whilst the other material circumstances are noted, they are not considered exceptional and that there is no wider public benefit from the development which can be considered to overcome the harm from the development. In accordance with paragraph 47 of the NPPF it is therefore considered the policies of the development plans should be applied in full and that therefore the application does not comply with policies DP12, DP15, DP21, DP26, DP37, DP38 and DP42 of the District Plan, policies CDNP04.2, CDNP05, CDNP06, CDNP09 and CDNP10 of the Crawley Down Neighbourhood Plan, and the contents of the NPPF and guidance on ancient woodland, ancient trees and veteran trees. Accordingly the application is recommended for refusal.

### **RECOMMENDATION**

It is recommended that planning permission be refused for the reason as laid out in Appendix A.

### **SUMMARY OF REPRESENTATIONS**

None received.

### **SUMMARY OF CONSULTEES**

#### **WSCC Highways Authority**

The proposal seeks to retain a cabin for residential purposes for a temporary period of one year.

Additional information is required relating to the positioning of the access serving the log cabin. The applicant must demonstrate the access widths and the achievable visibility from the access point.

For guidance the Design Manual for Roads and Bridges (DMRB) outlines that the visibility splays required for a 60mph road are 2.4m x 215m in both directions. Visibility splays should be drawn to the same side of the carriageway as the access and not interest third party land. It would be beneficial to have the location of roadside trees plotted within this plan to enable an accurate representation of the achievable visibility.

What is the internal site layout with regards to parking and turning?

Once this additional information has been provided, please re-consult.

#### **MSDC Drainage**

No objection in relation to flood risk.

More information required in respect of foul and surface water drainage.

## **MSDC Tree Officer**

Objection - Impact upon Ancient Woodland.

## **WORTH PARISH COUNCIL**

Support, but retention permission should be sought on an annual basis.

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### **INTRODUCTION**

Planning permission is sought for the retention of a new one bed residential dwelling for a period of one year. The development has already taken place with the dwelling having been constructed in mid-2018 and occupied since then. The application is therefore wholly retrospective and made under S.73a of the Town and Country Planning Act 1990. The application has referred been to members upon the request of the Ward members who wish the Council to take into consideration the compassionate grounds for allowing temporary planning permission for one year.

### **RELEVANT PLANNING HISTORY**

The site, which lies to the east of the dwelling at Yew Tree Cottage, and which forms its own planning unit unrelated to Yew Tree Cottage has been subject to previous applications for residential development including:

WP/049/77 - Outline application for the erection of a single storey residential dwelling. - Refused - 26th June 1977.

WP/006/86 - Erection of one 2/3 bedroom bungalow with garage - Refused 21st February 1986

WP/103/88 - Outline application - Proposed 2/3 bedroom bungalow - Refused 1st July 1988

DM/17/3842 - To place a static caravan on land adjoining Yew tree Cottage for temporary use as an annex. - Application withdrawn 6th April 2018 prior to decision being made.

The site thereafter came to the attention of the Local Planning Authority as a breach of planning control consisting of the construction of single residential dwelling in October 2018. This current application seeks to regularise the development.

### **SITE AND SURROUNDINGS**

The site is an area of rural woodland lying to the south of Wallage Lane. Heavily wooded with a historic vehicular access for forestry use onto Wallage Lane to the north, the parcel of land under the ownership of the applicant is approximately 1.75ha in size with a watercourse running north to south through the site and which acts as a boundary between the site and the dwelling at Yew Tree Cottage to the west.

The dwelling is located more centrally within the site with a 40m unmade access track leading from Wallage Lane to a clearing within the woodland where the dwelling is sited. The land thereafter falls away in level to a pond and further woodland which is designated as Ancient Woodland by the national Ancient Woodland Inventory.

The surrounding area is highly rural with scattered historic dwellings set within large plots off Wallage Lane and the village of Crawley Down being the closest settlement some 2km drive to the east or else can be reached by the Worth Way immediately south of the site.

Wallage Lane itself is C class narrow country lane with no pavement or pedestrian footpath running alongside where national speed limits apply (60mph).

In terms of planning policy the site falls within a rural area and countryside as defined by the Mid Sussex District Plan and the Crawley Down Neighbourhood Plan.

## **APPLICATION DETAILS**

The application seeks to regularise the creation of a new residential dwellinghouse upon the land for a period of 12 months. The applicant has stated that the occupation of the land and creation of the dwelling is necessary as she has otherwise owns no other property and wishes to care for her elderly mother who resides within Yew Tree Cottage to the east.

The dwelling on the land takes the form of a single storey wooden cabin measuring 11m x 4.5m and which internally provides bedroom, kitchen / lounge and bathroom accommodation. The total floor area of the building is 47 square metres. The building is timber clad with a small canopy and is set 40m south of Wallage Lane.

Some small scattered sheds considered incidental to the use of the building as a dwelling house are also present within the vicinity of the building with a potential residential curtilage having been indicated for land extending 10m in each direction from the building. Whilst this is noted and is used for the purposes of determining the application, there is no physical demarcation of the residential curtilage currently upon the site.

Access from Wallage Lane is via an historic forestry access. This is a narrow unmade access which had fallen out of use, but was reopened in connection with the residential use. No visibility splays have been created to assist visibility and none are proposed. No defined parking area has been created, however, parking for a number of vehicles is available around the building and on areas set to the side of the access track.

Whilst the cabin is of timber construction and set upon timber supports with no concrete foundations, the accommodation is self-contained and the cabin is not capable of being moved in one or two pieces and therefore is considered a building operation for purposes of S.55 of the Town and Country Planning Act and that as such the policies of the development plan associated with the creation and construction of a new residential unit should be applied.

As previously noted the development is complete and occupied and no proposed additions or amendments are under consideration.

## **LIST OF POLICIES**

### **District Plan**

The District Plan was adopted in March 2018.

DP4 - Housing  
DP5 - Planning to Meet Future Housing Need  
DP6 - Settlement Hierarchy  
DP12 - Protection and enhancement of countryside  
DP15 - New Homes in the Countryside  
DP17 - Ashdown Forest Special Protections Area (SPA) and Special Area of Conservation (SAC)  
DP21 - Transport  
DP26 - Character and Design  
DP27 - Dwelling Space Standards  
DP37 - Trees, Woodland and Hedgerows  
DP38 - Biodiversity  
DP39 - Sustainable Design and Construction  
DP41 - Flood Risk and Drainage  
DP42 - Water Infrastructure and the Water Environment

### **Crawley Down Neighbourhood Plan**

The Neighbourhood Plan for Crawley Down was 'made' in January 2016. It forms part of the development plan with full weight.

Relevant policies include:

CDNP04.2 - Infill Housing  
CDNP05 - Control of New Developments  
CDNP06 - Sustainable Drainage Systems  
CDNP08 - Prevention of Coalescence  
CDNP09 - Protect and Enhance Biodiversity  
CDNP10 - Promoting Sustainable Transport  
CDNP11 - Ashdown Forest Special Area of Conservation (SAC) and Special Protection Area (SPA)

### **National Policy and Legislation**

#### **National Planning Policy Framework (NPPF)**

The National Planning Policy Framework sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives which are interdependent and need to be pursued in mutually supportive ways. These are an economic, social and environmental objective. This means seeking to help build a

strong, responsive and competitive economy; to support strong, vibrant and healthy communities; and to contribute to protecting and enhancing the natural, built and historic environment.

Para 12 states *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'*

Para 47 states that the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

## **Planning Practice Guidance**

### **Ancient woodland, ancient trees and veteran trees: protecting them from development**

### **Technical Housing Standards**

#### **ASSESSMENT**

The main issues for consideration are:

- the principle of the development and sustainability of the location;
- the impact upon the character of the area;
- the impact upon the ancient woodland;
- the impact to highways safety;
- sustainability;
- Ashdown Forest; and
- the personal circumstances of the applicant.

#### **Principle of development**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70(2) of the Town and Country Planning Act 1990 states:

*'In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,*
- b) Any local finance considerations, so far as material to the application, and*
- c) Any other material considerations.'*

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

*'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'*

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point, the development plan in this part of Mid Sussex consists of the District Plan and the Crawley Down Neighbourhood Plan (2016).

The District Plan has been adopted and the Council can demonstrate a 5 year supply of deliverable housing land and the balance to be applied in this case is therefore a non-tilted one. As such the policies of the development plans are up to date and full weight should be attributed to them.

The site lies outside of the built up area of Crawley Down within a rural area and as such the policies DP12 and DP15 apply. Policy DP12 states:

*The countryside will be protected in recognition of its intrinsic character and beauty. Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and:*

- *it is necessary for the purposes of agriculture; or*
- *it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan.*

The site is not allocated for development and whilst the land has previously been used for forestry purposes, this activity is no longer taking place and the land and use are completely unrelated to the purposes of agricultural. The principle of residential development in rural areas such as this is not supported and is contrary to policy DP12.

Policy DP15 does allow for special justification for new dwellings in rural areas, however, states that:

*Provided that they would not be in conflict with Policy DP12: Protection and Enhancement of the Countryside, new homes in the countryside will be permitted where special justification exists. Special justification is defined as:*

- *Where accommodation is essential to enable agricultural, forestry and certain other full time rural workers to live at, or in the immediate vicinity of, their place of work; or*
- *In the case of new isolated homes in the countryside, where the design of the dwelling is of exceptional quality and it enhances its immediate setting and is sensitive to the character of the area; or*
- *Affordable housing in accordance with Policy DP32: Rural Exception Sites; or*



- *The proposed development meets the requirements of Policy DP6: Settlement Hierarchy.*

Notwithstanding that the development is not considered to comply with policy DP12, it is noted that development could be permitted where special justification exists. It is noted that the special justification as laid out in the text of the policy relates to the exceptional design of the property and that the need is essential for agricultural, forestry and other rural workers to be close to their place of employment.

The applicant has stated that the dwelling is required in order to care for their elderly mother and that she has no other accommodation locally. Whilst this need is noted, it does not fall within the remit of special justification as laid out and therefore cannot comply with policy DP12. The exceptional design criteria relates to paragraph 79 of the NPPF where isolated new homes are to be avoided unless:

*(e) the design is of exceptional quality, in that it:*

- *is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area*

The cabin is of a simple timber clad construction heated via a wood burning stove and which otherwise appears to be connected to main services. Such a simple functional design which was constructed from imported materials does not appear to have had respect to high quality or exceptional design and therefore cannot be considered to raise standards of design and therefore is not compliant with policy 79 of the NPPF.

It is therefore considered that no exceptional circumstances, as laid down in policies and guidance, exist to suggest that the policies of the development plan are being complied with and the creation of a residential unit in this rural location is contrary to policy DP12 and DP15 of the District Plan.

It is noted that the applicant has stated that the development could be regarded an 'ancillary' to the occupation of Yew Tree Cottage. Whilst noted that there is a personal relationship between the owners of the two parcels of land, Officers are of the opinion that the development which has taken place has created a separate planning unit and unit of residential accommodation. The accommodation is self-contained with its own access and, apparently, water and power supplies. There is no physical connection to Yew Tree Cottage and the owner has confirmed her sole residence as being within the new dwelling. There is therefore no evidence to support the building being used as ancillary accommodation. Notwithstanding this assessment the final lines of policy DP15 state:

*New 'granny annexes' that are physically separate to the dwelling are defined as a new home and are subject to the same requirements as above.*

As such even if the accommodation were to be considered ancillary accommodation, the development, by virtue of being separate and some 65m from Yew Tree Cottage, would remain contrary to the requirements of policy DP15.

## **Design and Impact on Character and Appearance of Area**

Policy DP26 of the District Plan deals with design matters and states the following;

*'All development and surrounding spaces, including alterations and extension to existing buildings and replacement dwellings, will be well designed and reflect and distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:*

- *is of high quality design and layout and includes appropriate landscaping and greenspace;*
- *contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *protects valued townscapes and the separate identity and character of towns and villages;*
- *does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution.*
- *creates a pedestrian friendly layout that is safe, well connected, legible and accessible;*
- *incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- *positively addresses sustainability considerations in the layout and the building design;*
- *take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300 plus unit) scheme will also normally be expected to incorporate a mixed use element;*
- *optimises the potential of the site to accommodate development.'*

A similar ethos to DP26 of the District Plan is found within Policy CDNP04.2 and CDNP05 of the Neighbourhood Plan which relates to building extensions and infill development. Amongst other criteria, this policy requires the scale, height and form of developments to integrate with the village of Crawley Down and also the surrounding character of the area and that materials are compatible with the surrounding area.

Paragraph 124 of the NPPF seeks the creation of high quality buildings and states that *'Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.'*

In addition, paragraph 127 of the NPPF requires developments to *'function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development'* and to also be *'visually attractive as a result of good architecture, layout and appropriate and effective landscaping'*.

The dwelling is located within a clearing in the woodland and it is proposed that a defined curtilage of approximately 30m x 35m be created around the dwelling. It is noted that the dwelling is set back from the road with limited views from wider public viewpoints, however, the creation of a residential curtilage provides the potential for the residential use to become more intensive and therefore more obtrusive. Whilst development around the building in the form of outbuildings could be restricted, residential use in itself creates a level of use and paraphilia which would be stored and take place within the defined curtilage. The clearing was previously undisturbed woodland with little evident development and the introduction of a residential use and the associated paraphernalia (washing lines, personal items etc.) would give rise to a residential character within the woodland and which would be considered out of keeping with the natural environment of the area.

The basic and simple standalone design of the building, whilst falling short of being exceptional, is not considered out of keeping in itself, however, the resulting impact from the formalisation of the residential use and curtilage, even for the one year applied for, would be detrimental on the overall character and appearance of the area.

Various 'residential' items are already visible from Wallage Lane (access track, shed etc.) and therefore any increase in intensity of use poses a significant possibility of the visual impact upon the character and appearance of the area increasing and becoming more harmful and contrary to policy DP26 of the District Plan, policies CDNP04.2 and CDNP05 of the Neighbourhood Plan and paragraphs 124 and 127 of the NPPF.

## **Highway Safety**

Policy DP21 of the District Plan relates to transport and requires schemes to be *'sustainably located to minimise the need for travel'* and take *'opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking'*. In addition it requires where *'practical and viable, developments should be located and designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles.'*

Policy CDNP10 of the Neighbourhood Plan also states that development should be *Providing safely located vehicular and pedestrian access with adequate visibility.*

Paragraph 108 of the NPPF is relevant in respect of transport matters and states that:

*'In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*

- a) *appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location;*
- b) *safe and suitable access to the site can be achieved for all users; and*
- c) *any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.'*

It is accepted that the access is historic and was previously used for forestry on a small scale, but that this use, and the use of the access, has not taken place for some years. The access itself is lawful, however, is unmade and does not benefit from any visibility splays for the access onto the 60mph road.

WSSC LHA have been consulted and have raised queries regarding visibility splays in order that safe access onto the site can be established by virtue of the potentially more intensive residential use of the access. This includes demonstrating visibility splays of 215m in each direction. Details of these splays have yet to be received from the applicant, however, these are considerable requirements necessary as a result of the 60mph road onto which the access leads. It would not appear that the applicant has control of land 215m in each direction from the access and therefore in lieu of accurate plans indicating a safe access, the development is considered to be contrary to policy DP21 of the District Plan and CDNP10 of the Neighbourhood Plan.

With respect to the sustainability of the location, the site lies 2km from the village of Crawley Down and Wallage Lane, which does not benefit from any bus stops or routes, is a rural road with no pedestrian pavements. The predominant means of accesses the site is therefore via private motor car and with no other sustainable transport options available.

It is noted that the surrounding area is served by a number of public footpaths including the Worth Way to the south which leads to Crawley Down. Whilst other public footpaths are unmade and therefore difficult to pass in poor weather, the Worth Way has a more permanent finish and could be used as a pedestrian link to the village. The route, however, remains at least 2km and that this is likely to be utilised only when the weather is good or else on a fairly infrequent basis. It therefore remains the opinion of Officers that private car remains the predominant means of accessing the site and that therefore the site lies in an unsustainable location contrary to policies DP21, CDNP10 and paragraph 108 of the NPPF.

## **Drainage**

Policy DP42 of the District Plan relates to surface water and drainage and states:

*Development proposals which increase the demand for off-site service infrastructure will be permitted where the applicant can demonstrate;*

- *that sufficient capacity already exists off-site for foul and surface water provision. Where capacity off-site is not available, plans must set out how appropriate infrastructure improvements approved by the statutory undertaker will be completed ahead of the development's occupation; and*
- *that there is adequate water supply to serve the development.*

MSDC Drainage Officers have been consulted and requested further information as to surface water discharge and foul sewerage provision. At the time of the writing of the report none has been provided. It is informally observed that surface water appears to discharge to ground, and thereafter into the watercourse and that a private sewerage connection to the dwelling at Yew Tree Cottage may exist, however, without further information it cannot be considered that the drainage provision afforded to the property currently complies with the requirements of policy DP42.

## **Trees and Ecology**

Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) lists species of animal (other than birds) which are provided special protection under the Act. Under Section 13 of the Wildlife and Countryside Act 1981 (as amended), all wild plants are protected from being uprooted without the consent of the landowner. In addition to the protection afforded by the Wildlife and Countryside Act 1981 (as amended), certain species are also covered by European legislation. These species are listed in Schedule 2 of the Conservation (Natural Habitats, 7c.) Regulations 1994 (as amended).

Policy DP38 of the District Plan refers to biodiversity and seeks to protect and enhance biodiversity whilst policy DP37 refers to trees, including Ancient Woodland and states:

*The District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting. In particular, ancient woodland and aged or veteran trees will be protected.*

*Development should be positioned as far as possible from ancient woodland with a minimum buffer of 15 metres maintained between ancient woodland and the development boundary.*

Paragraph 175 of the National Planning Policy Framework states:

*'When determining planning applications, local planning authorities should apply the following principles:*

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*

- c) *development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) *development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.'*

The latest guidance (November 2018) also states that when considering applications which affect Ancient Woodland that:

*You should refuse planning permission if development will result in the loss or deterioration of ancient woodland, ancient trees and veteran trees unless:*

- *there are wholly exceptional reasons*
- *there's a suitable compensation strategy in place*

The site is entirely wooded and whilst not benefitting from any woodland protection order, the woodland covering the southern element of the site is included within the national Ancient Woodland Inventory. In accordance with policy DP37 a buffer zone of 15m to ancient woodland should also be provided and it is noted that the dwelling and residential curtilage around the building fall within the 15m buffer zone.

No relevant Arboricultural Impact Assessment or Ecological Appraisal has been submitted with the application and therefore the development can solely be assessed against the requirements of the policies and guidance and that no compensation strategy has been proposed. As such the MSDC Tree Officer has raised an objection and states:

*A dwelling within this woodland may bring future pressure to reduce or even fell surrounding trees.*

*Vehicular access into the woodland could also be damaging due to ground compression and impact damage.*

*Although we have no information regarding services and waste at the property, this is also a factor.*

*Areas of ancient woodland are crucial in supporting wildlife, trees and native plants. For this reason I feel that a dwelling in this location is inappropriate and object to the above application.*

The character of the surrounding area is defined by the large areas of woodland and that any pressure to fell or else damage the ancient woodland would both be harmful to the ecology of the area, but also its character and appearance. The retention of a residential unit within protected woodland would lead to further soil compaction and the loss of important woodland and would, in almost all circumstances, be objected to on principle. The possibility of 'exceptional circumstances' is again noted and this

will be assessed in the planning balance, however, it must be considered that for the purposes of policy DP37 and the national guidance on Ancient Woodland, that the development in contrary to the policies of the development plan.

No Bat Survey Report has been submitted and therefore no assessment of the impact upon protected species can be made. Again without suitable information the requirements of policy DP38 cannot be met or assessed and therefore it cannot be considered that the development complies with the requirements of policy DP38.

### **Ashdown Forest SAC**

Under the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council - has a duty to satisfy itself that any plans or projects that they regulate (including plan making and determining planning applications) are not likely to have a significant effect on a European site of nature conservation importance. For most developments in Mid Sussex, the European sites of focus are the Ashdown Forest Special Protection Area (SPA) and Ashdown Forest Special Area of Conservation (SAC). Planning permission cannot be granted by the District Council where the likelihood of significant effects exists. The main issues are recreational disturbance on the SPA and atmospheric pollution on the SAC, particularly arising from traffic emissions.

This application has been screened for its potential effects on the SPA and SAC. The site lies outside of the 7km zone of influence for the SPA and therefore mitigation is not required and it has also indicated that there is no likelihood of a significant effect on the SAC.

Increased traffic emissions as a consequence of new development may result in atmospheric pollution on Ashdown Forest. The main pollutant effects of interest are acid deposition and eutrophication by nitrogen deposition. High levels of nitrogen may detrimentally affect the composition of an ecosystem and lead to loss of species.

The proposed development has been assessed through the Mid Sussex Transport Study (Updated Transport Analysis) as windfall development, such that its potential effects are incorporated into the overall results of the transport model which indicates there would not be an overall impact on Ashdown Forest. Sufficient windfall capacity exists within the development area. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

The screening assessment concludes that there would be no likely significant effect on the Ashdown Forest SPA and SAC from the proposed development. Since the proposed new development is not considered to have a likely significant effect alone on the Ashdown Forest SPA and SAC, there is also unlikely to be an in combination effect.

## **Other matters**

It is noted that the application is made under S.73a of the Town and Country Planning Act and it is a retrospective application. The development is therefore a breach of planning control which was brought to the attention of the Council. Officers have been in discussions with the applicant and had advised that planning permission would be unlikely to be granted for the development due to the planning harm and principled objections about new residential development being built and taking place within isolated woodland locations. Therefore should this current application be refused it is open to the Council to pursue enforcement action to remedy the harm to amenity.

In accordance with the guidance on planning enforcement within the NPPF, enforcement action is discretionary and the Council retains control on the scope and use of any enforcement powers. Therefore enforcement action and associated enforcement notices can be tailored to reflect each breach of planning control and must also be reasonable with regards to the requirements of any notice and the time scales proposed.

In this instance, the personal circumstances of the applicant are noted and that whilst the development to which she seeks permission may not be acceptable on planning grounds, the Council would allow a sufficient period of time for the owner to seek alternative accommodation and to cease the breach of planning control of their own accord without recourse to the full powers afforded to an LPA. Members are therefore requested to consider that other means are open to the Council to ensure that the policies of the development plan are upheld but that also reflect the personal circumstances of the applicant.

## **PLANNING BALANCE AND CONCLUSION**

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the development plan and then to take account of other material planning considerations including the NPPF.

National planning policy states that planning should be genuinely plan led. The Council has a recently adopted District Plan and is able to demonstrate that it has a five year housing land supply. Planning decisions should therefore be in accordance with the development plan unless material considerations indicate otherwise. As the Council can demonstrate a 5 year supply of deliverable housing land the planning balance set out in the NPPF is an un-tilted one.

The application site lies in a wooded rural area with poor transport links to services and where new residential development is generally opposed in principle. The development also gives rise to harm to the Ancient Woodland and character of the area by virtue of the increased intensity of use associated with a residential use and that without additional information relating to drainage and ecology, or that the requirements of the LHA in respect of highway safety can be achieved, that the



policies of the development plan in respect of all these issues cannot be complied with.

The material considerations to be weighed against the requirements of the policy solely relate to the applicants own personal circumstances and that they wish to reside upon the land in order to care for their elderly mother who resides in the neighbouring property at Yew Tree Cottage. It is also noted that the owner states she owns no other property in the area, although no further evidence to substantiate this claim has been provided and the applicant is not, at the time of writing, seeking to obtain housing via the Local Authority.

Whilst the needs for caring for an elderly relative are noted, such care would normally be best provided by an individual living within the same property and whilst this solution has been raised with the applicant, it is apparently unachievable by virtue of another carer already being present in the property. Additionally the prospect of improving the accommodation at Yew Tree Cottage has been raised, however, this option had again been discount by the applicant. It is also not, unfortunately, an uncommon requirement for elderly relatives to require close care towards the end of their lives. The circumstances themselves therefore cannot be considered to be exceptional for the applicant themselves and that they are not any different from those which many other families might face. That care requirements for an elderly relative are required is therefore not considered to be sufficient reason for a new residential dwelling to be created, least one in a location which is considered unacceptable in principle. It is also noted that any public benefit from the development relates solely to the immediate family of the applicant and that there wider public dis-benefits relating to the impact upon highway safety or the character and appearance of the area relating to the development within the woodland. It is therefore not considered that there is wider public benefit to the development which would outweigh the planning harm or else suggest that the policies of the development plan should not be applied in full.

It is noted that the applicant may not have alternative accommodation within the vicinity, however, once more it is not considered that this alone, or in conjunction with the circumstances outlined above, would be sufficient to consider that, if a new residential development were to be created, that the site and location proposed would be acceptable and comply with the adopted policies.

It is also noted that the application seeks to obtain a temporary planning permission for one year. Whilst this is permissible under planning law and that a condition could be imposed requiring the development to cease after 12 months, it would not seem that such a condition would be appropriate in this instance. Whilst the requirement for care may cease, there does not appear to be any evidence or intention that the applicant otherwise seeks to find alternative accommodation and that therefore a more lengthy or permanent occupation of the land might either be necessary or occur.

The applicant has taken it upon themselves to create a new self-contained residential dwelling within the woodland without planning permission. Whilst the circumstances of the applicant are noted, these are not considered to be exceptional or else provide a wider public benefit and that there not sufficient material

circumstances, as required by paragraph 47, so that the requirements and policies of the newly adopted development plan should not be applied.

As such the development represents a new residential development in an unsustainable rural location where harm is caused to ancient woodland and the character and appearance of the area and where policies relating to biodiversity, highway safety and drainage have not been complied with.

The application is thereby considered to be contrary to policies DP12, DP15, DP21, DP26, DP37, DP38 and DP42 of the District Plan, policies CDNP04.2, CDNP05, CDNP06, CDNP09 and CDNP10 of the Neighbourhood Plan, and the contents of the NPPF and guidance on ancient woodland, ancient trees and veteran trees.

Accordingly the application is recommended for refusal for the reasons as laid out in Appendix A.

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#### **APPENDIX A – REASONS FOR REFUSAL**

1. The development is located within the countryside outside any built up area as defined in the Development Plan where there is no identified need in this location and the proposals are not necessary for the purposes of agriculture and are not supported by other policies in the Plan. In the absence of special justification for the dwelling, the development is considered to represent an unsustainable form of development contrary to policies DP12 and DP15 of the Mid Sussex District Plan and policy CDNP05 of the Crawley Down Neighbourhood Plan.
2. By virtue of the location and the siting of the development, it is considered to be unsustainably located within a rural area being remote from the nearest village and having poor walking and cycling accessibility to local shops, services and employment opportunities. Occupants would be heavily reliant on the use of a private car to gain access to local services. The development therefore conflicts with Policy DP21 of the District Plan, policy CDNP10 of the Crawley Down Neighbourhood Plan and the aims of the NPPF.
3. By virtue of the siting within a buffer zone surrounding Ancient Woodland it is considered that the development causes harm to the future rendition of woodland important to the character and appearance of the area and the biodiversity of the area contrary to policy DP27 and DP26 of the District Plan, policy CDNP09 of the Crawley Down Neighbourhood Plan and the guidance on ancient woodland, ancient trees and veteran trees.
4. By virtue of the lack of information relating to biodiversity it has not been established that the development does not cause harm to protected species and therefore is in contrary to policy DP38 of the District Plan and policy CDNP09 of the Crawley Down Neighbourhood Plan.
5. By virtue of the lack of information relating to surface water and foul drainage provision it has not been established that the development does not cause harm to flood risk or foul sewerage capacity and is therefore contrary to policies DP41 and DP42 of the District Plan and policy CDNP06 of the Crawley Down Neighbourhood Plan.

6. By virtue of the lack of information relating to visibility splays, it has not been established that the development does not give rise to highway safety hazards and is therefore contrary to policy DP21 of the District Plan and policy CDNP10 of the Crawley Down Neighbourhood Plan.

## INFORMATIVES

1. The application has been assessed and determined on the basis of the schedule of plans listed below under the heading "Plans Referred to in Consideration of this Application".  
  
Reason: For the avoidance of doubt and in the interests of proper planning
2. In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
3. You are advised that the development to which this application relates is a breach of planning control where it would be considered expedient to pursue formal enforcement action. You are advised to contact the Council to discuss the matter in more detail.

### Plans Referred to in Consideration of this Application

The following plans and documents were considered when making the above decision:

Plan Type	Reference	Version	Submitted Date
Block Plan	-	-	25.01.2019
Location Plan	-	-	27.11.2018
Proposed Floor and Elevations Plan	mar05	B	27.11.2018

## APPENDIX B – CONSULTATIONS

### Parish Consultation

Support, but retention permission should be sought on an annual basis.

### Trees And Landscape

I've reviewed our mapping and the information we have on file for this application, and have some concern over the appropriateness of a dwelling in this location.

The dwelling is an area designated as ancient woodland. A dwelling within this woodland may bring future pressure to reduce or even fell surrounding trees.

Vehicular access into the woodland could also be damaging due to ground compression and impact damage.

Although we have no information regarding services and waste at the property, this is also a factor.

Areas of ancient woodland are crucial in supporting wildlife, trees and native plants. For this reason I feel that a dwelling in this location is inappropriate and object to the above application.

### **Drainage - Fiona Bishop / Scott Wakely**

#### **SURFACE WATER DRAINAGE PROPOSAL**

The application form states surface water drainage is via a soakaway.

#### **FOUL WATER DRAINAGE PROPOSAL**

The application form states foul water drainage is via a septic tank.

#### **FLOOD RISK CONSULTATION**

The proposed development is within flood zone 1 and is deemed to be at low fluvial flood risk. The proposed development is not within an area identified as having possible surface water (pluvial) flood risk. There are not any historic records of flooding occurring on this site. This does not mean that flooding has never occurred here, instead, that flooding has just never been reported.

The land to the west of the watercourse and in the direct curtilage of Yew Tree Cottage is located in an area of increased flood risk. The applicant has stated that flooding has previously occurred within the direct curtilage of Yew Tree Cottage.

It is important to note that the relocation of the static caravan / temporary accommodation within the direct curtilage of Yew Tree Cottage to the west of the watercourse would not be acceptable on flood risk grounds.

#### **DRAINAGE CONSULTATION**

No drainage details have been provided as part of the application. To allow us to provide comment in relation to drainage we would require the following further information to be provided;

- Confirmation of how foul and surface water is drained on site, and whether drainage has been connected to existing systems or if new systems have been created.
- A plan showing the surface and foul water drainage for the dwelling.

Further information into our requirements for foul and surface water drainage are included within the 'further advice' section.

#### **FURTHER ADVICE**

The following information will be required for the proposed development.

This proposed development will need to fully consider how it will manage surface water run-off. Guidance is provided at the end of this consultation response for the various possible methods. However, the hierarchy of surface water disposal will need to be followed and full consideration will need to be made towards the development catering for the 1 in 100 year storm event plus extra capacity for climate change.

The proposed development drainage will need to:

- Follow the hierarchy of surface water disposal.
- Protect people and property on the site from the risk of flooding

- Avoid creating and/or exacerbating flood risk to others beyond the boundary of the site.
- Match existing Greenfield rates and follow natural drainage routes as far as possible.
- Calculate Greenfield rates using IH124 or a similar approved method. SAAR and any other rainfall data used in run-off storage calculations should be based upon FEH rainfall values.
- Seek to reduce existing flood risk.
- Fully consider the likely impacts of climate change and changes to impermeable areas over the lifetime of the development.
- Consider a sustainable approach to drainage design considering managing surface water at source and surface.
- Consider the ability to remove pollutants and improve water quality.
- Consider opportunities for biodiversity enhancement.

### **WSCC Highways Authority**

The proposal seeks to retain a cabin for residential purposes for a temporary period of one year.

Additional information is required relating to the positioning of the access serving the log cabin. The applicant must demonstrate the access widths and the achievable visibility from the access point.

For guidance the Design Manual for Roads and Bridges (DMRB) outlines that the visibility splays required for a 60mph road are 2.4m x 215m in both directions. Visibility splays should be drawn to the same side of the carriageway as the access and not interest third party land. It would be beneficial to have the location of roadside trees plotted within this plan to enable an accurate representation of the achievable visibility.

What is the internal site layout with regards to parking and turning?

Once this additional information has been provided, please re-consult.